

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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| BALESTRIERE LANZA PLLC, | : | |
| | : | Case No. 08-cv-4731 (GEL) |
| Plaintiff, | : | |
| | : | PLAINTIFF'S NOTICE OF |
| - against - | : | MOTION AND MOTION TO |
| | : | <u>REMAND TO STATE COURT</u> |
| SILVER POINT CAPITAL, LP, | : | |
| | : | |
| Defendant. | : | |
| | : | |
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**PLAINTIFF'S NOTICE OF MOTION AND
MOTION TO REMAND TO STATE COURT**

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. § 1491, on July 1, 2008, Plaintiff Balestriere Lanza PLLC ("Plaintiff") will move to remand the above-captioned case to the Supreme Court of New York, New York County, the Court in which the case was pending prior to removal, upon the following grounds:

1. On March 27, 2008, Plaintiff law firm filed an action against Silver Point Capital, LP ("Defendant") to collect \$73,496 in unpaid legal fees.
2. On May 15, 2008, Silver Point answered the Complaint and asserted two counterclaims, requesting a total of \$250,000 in damages.
3. On the basis of Defendant's counterclaims, Plaintiff sought to remove the action to federal court, relying on federal diversity jurisdiction.
4. Upon further consideration, Plaintiff ascertained that New York State court is the appropriate forum, as plaintiffs may not remove under 28 U.S.C. § 1441.

5. Both parties now openly acknowledge that the case is properly within the jurisdiction of the Supreme Court of the State of New York.

6. In fact, this Court may even summarily remand the case to New York State court under 28 U.S.C. § 1446(c)(4).

WHEREFORE, Plaintiff prays that this case be remanded to the Supreme Court of the State of New York, New York County.

Dated: New York, New York
June 3, 2008

Respectfully submitted,

s/ Craig Stuart Lanza
Craig Stuart Lanza (CL-2452)
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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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| | : | |
| BALESTRIERE LANZA PLLC, | : | |
| | : | Case No. 08-cv-4731 (GEL) |
| Plaintiff, | : | |
| | : | [PROPOSED] ORDER |
| - against - | : | REMANDING CASE |
| | : | TO STATE COURT |
| SILVER POINT CAPITAL, LP, | : | |
| | : | |
| Defendant. | : | |
| | : | |
| ----- | x | |

IT IS HEREBY ORDERED that, upon Plaintiff's motion, this case be remanded to the Supreme Court of the State of New York, New York County.

IT IS FURTHER ORDERED that the clerk of this court make out a certified copy of the motion to remand, and this order, and that the clerk forward it to the clerk of the Supreme Court of the State of New York, New York County.

SO ORDERED.

Hon. Gerard E. Lynch
United States District Court Judge

Dated: New York, New York
____ day of _____, _____

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing document was served on the following counsel of record on June 3, 2008, via the methods listed below:

By ECF and First Class Mail

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